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**DIGEST OF OTHER RECENT VIRGINIA DECISIONS.****Supreme Court of Appeals.**

Note.—In this department we give the syllabus of every case decided by the Virginia Supreme Court of Appeals, except of such cases as are reported in full.

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SMILEY *v.* COMMONWEALTH *ex rel.* KERR.

Nov. 12, 1914.

[83 S. E. 406.]

**Highways (§ 93\*)—Road Superintendent—Election—"Majority."**—Acts 1908, c. 280, as amended by Acts 1910, c. 8, provides that there shall be appointed biennially, by the supervisors of the county, a superintendent of roads if the board deems such superintendent necessary. Code 1904, § 832, provides that all questions submitted to the board of supervisors shall be determined by a vote of a majority, and in case of a tie it shall be determined by a commissioner in chancery appointed as tie breaker by the circuit court of the county. Held, that a "majority" of the board necessary to elect a road superintendent meant a majority of all the members-elect of the board; and hence, where a board of supervisors consisted of six members and there was a tie on the election of a road supervisor, the tie could not be broken by the vote of the tie breaker appointed by the circuit court.

[Ed. Note.—For other cases, see Highways, Cent. Dig. §§ 304-307; Dec. Dig. § 93.\* 12 Va.-W. Va. Enc. Dig. 930.]

For other definitions, see Words and Phrases, First and Second Series, Majority.]

Error to Circuit Court, Augusta County.

Quo warranto by the Commonwealth on the relation of H. H. Kerr, Commonwealth's Attorney, against William V. Smiley. From a judgment in favor of relator, respondent brings error. Affirmed.

*J. M. Perry* of Staunton, for plaintiff in error.

*Timberlake & Nelson* and *Jos. A. Glasgow*, all of Staunton, for defendant in error.

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MORRIS & CO., Inc., *v.* COMMONWEALTH.

Nov. 12, 1914.

[83 S. E. 408.]

1. **Licenses (§ 15\*)—Business Tax—"Butcher."**—Where defendant,

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\*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

a nonresident corporation, operated packing houses in various cities, purchasing live stock, slaughtering the same, and from the carcasses manufacturing and preparing for sale various food products, maintained at R. a distributing house, where it sold sausage, head cheese, mincemeats, canned meats, bacon, smoked meats, oleomargarine and lard manufactured by it, but no fresh meat, it was not a "butcher," within Tax Law (Code 1904, p. 2221) § 46, providing that license taxes on merchants shall be graduated according to purchases, except that butchers and certain others shall be included within such section.

[Ed. Note.—For other cases, see Licenses, Cent. Dig. §§ 30-35; Dec. Dig. § 15.\* 9 Va.-W. Va. Enc. Dig. 313, 315, 318.

For other definitions, see Words and Phrases, Butcher.]

**2. Licenses (§§ 12, 15\*)—Business Tax—"Manufacturer"—"Merchant."**—Tax Law (Code 1904, p. 2220) § 45, imposes a business tax on merchants, graduated according to the amount of purchases made by him during the preceding year; section 47 declaring that nothing contained in the preceding sections shall require a company selling the products of its own mines or lands or manufactures to pay a merchant's license for so doing. Held that, where a foreign packing corporation maintained a business office at R., where it sold sausage, head cheese, mince, canned, and smoked meats, bacon, oleomargarine, and lard manufactured by it, it was as to such products a manufacturer exempt from the tax, and not a merchant; the term "manufacturer" being used to denote one who produces a combination with various materials and ingredients requiring skill, care, and attention, while a "merchant" is one whose business is to buy and sell merchandise, one who habitually trades in merchandise.

[Ed. Note.—For other cases, see Licenses, Cent. Dig. §§ 23, 30-35; Dec. Dig. §§ 12, 15.\* 9 Va.-W. Va. Enc. Dig. 313.

For other definitions, see Words and Phrases, First and Second Series, Manufacturer; Merchant.]

**3. Licenses (§ 15\*) — Business Tax — Merchandise — "Actually Bought."**—Tax Law (Code 1904, p. 2220) § 45, imposes a license tax upon merchants, graduated according to the purchases made by them during the preceding year, and requires a verified report showing the amount of goods "actually bought" during the preceding 12 months. Section 47 provides that the act shall not require a company selling the products of its own manufacture to pay a merchant's license for so doing. Held that, where a foreign packing corporation maintained a place of business within the state, where it sold goods imported from its plants in other states of its own manufacture and other goods purchased by it for resale, the words

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\*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

"actually bought" were limited to the latter, and did not include the manufactured goods, though the animals from which such goods were made had been purchased by the company for slaughter, manufacture, and sale.

[Ed. Note.—For other cases, see Licenses, Cent. Dig. §§ 30-35; Dec. Dig. § 15.\* 9 Va.-W. Va. Enc. Dig. 313.]

Error to Corporation Court of Roanoke.

Morris & Co., Incorporated, was convicted of fraudulently procuring a license to do business as a merchant, and it brings error. Reversed.

*Hall & Woods*, of Roanoke, and *Eppa Hunton, Jr.*, of Richmond, for plaintiff in error.

*The Attorney General*, for the Commonwealth.

DARBY COAL MINING CO. *v.* SHOOP.

Nov. 12, 1914.

[83 S. E. 412.]

**1. Master and Servant (§§ 286, 288, 289\*)—Injuries to Servant—Actions—Jury Questions.**—In an action by a miner, injured by a fall of slate, the questions whether the injury was the result of defendant's negligence, or whether plaintiff was guilty of contributory negligence, or assumed the risk, held for the jury.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. §§ 1001, 1006, 1008, 1010-1015, 1017-1033, 1036-1042, 1044, 1046-1050, 1068-1090, 1092-1132; Dec. Dig. §§ 286, 288, 289.\* 9 Va.-W. Va. Enc. Dig. 726.]

**2. Master and Servant (§§ 101, 102\*)—Injuries to Servant—"Negligence"—"Actionable Negligence."**—"Negligence" is a failure to observe that degree of care which the circumstances require, and any failure on the part of the master to exercise that reasonable degree of care required is "actionable negligence."

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. §§ 135, 171, 174, 178-184, 192; Dec. Dig. §§ 101, 102.\* 9 Va.-W. Va. Enc. Dig. 673.]

For other definitions, see Words and Phrases, First and Second Series, Actionable Negligence; Negligence.]

**3. Trial (§ 296\*)—Instructions—Cure of Error.**—Where, in other instructions, the court charged that plaintiff, who was injured by a fall of slate in a coal mine, was guilty of contributory negligence, if it was his duty to have inspected the roof and the inspection would have disclosed the danger, error cannot be predicated upon instructions on the duty of the master to have inspected the roof, which

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\*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.